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services, so the VGE approach unreasonably discounts the importance of these facilities.

Other special access data that Verizon submitted with its Reply Comments is irrelevant or flawed as well.

- \* Exhibits 5 and 6 to the Lew/Wimsatt/Garzillo Reply Declaration purport to provide retail and wholesale special access and private line demand by wire center as of December 2006.<sup>90</sup> These Exhibits suffer from the same flaws as Exhibit 10 – in particular, they aggregate special access demand based on VGEs, they lump together loops and transport services, and they do not distinguish between special access used for local services and special access used for long distance or wireless services.
- \* Exhibit 7 to the Lew/Wimsatt/Garzillo Reply Declaration provides the distribution of 2005 revenue from high-capacity special access by wire center.<sup>91</sup> Verizon is apparently suggesting there is extensive facilities-based competition concentrated in wire centers where Verizon derives significant wholesale revenues and, therefore, Section 251(c)(3) loop and transport forbearance should be granted in those wire centers. However, nothing in this Exhibit shows where any facilities-based competition exists, let alone the extent of that competition, or the penetration of competitive facilities, so it is irrelevant to the Commission's forbearance analysis. There is no reason to presume a correlation between Verizon's special access revenues in a wire center and the amount of facilities-based competition in that wire center. Rather, it is more likely that Verizon's special access revenues would be depressed in wire centers served by facilities-based competitors, due to loss of market share by Verizon. Of course, the converse is not true—low special access revenues might simply indicate a small number of potential customers, rather than extensive facilities-based competition.<sup>92</sup>

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<sup>90</sup> *Lew/Wimsatt/Garzillo Reply Declaration*, at ¶¶ 22-23, Exhibits 5 & 6 (Highly Confidential).

<sup>91</sup> *Lew/Wimsatt/Garzillo Reply Declaration*, at ¶ 24, Exhibit 7 (Highly Confidential). Verizon updated this Highly Confidential Exhibit to include 2006 data. *See Letter from Joseph Jackson, Associate Director, Federal Regulatory, Verizon, to Marlene Dortch, Secretary, Federal Communications Commission*, WC Docket No. 06-172, Attachment B (filed Jun. 13, 2007).

<sup>92</sup> In Exhibit 9 of the *Lew/Wimsatt/Garzillo Reply Declaration*, Verizon provides the number of CLECs with collocation arrangements, by wire center, as of December 2006.

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For the above reasons, the Commission should accord no weight to Verizon's special access data.

### **B. Section 251(c)(3) Forbearance Is Not Warranted Where The Special Access Market Is Not Competitive**

Apart from the shortcomings with the special access data provided by Verizon outlined above, Verizon has failed to address a key issue that undermines its contention that the use of special access warrants Section 251(c)(3) unbundling relief. Verizon's implicit claim that special access-based competition would be unaffected by forbearance – if special access based competition were relevant to the Commission's forbearance analysis (which it is not) – is belied by its ability to earn supracompetitive rates-of-return on its special access service offerings and increase its special access rates dramatically where it has obtained Phase II special access pricing relief in the MSAs at issue.<sup>93</sup> The *GAO Report*<sup>94</sup> and the extensive record before the Commission in the *Special Access Reform* proceeding confirm this. These issues were raised by comments filed on March 5, 2007,<sup>95</sup> so Verizon's failure to respond to them is significant.

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*See Verizon Lew/Wimsatt/Garzillo Reply Declaration*, at ¶ 25, Exhibit 9 (Highly Confidential). The Commission has never considered the pure number of collocations to be relevant to its Section 251(c)(3) forbearance analysis, although it does look at this standard in its Phase II special access pricing flexibility triggers. The U.S. Government Accountability Office ("GAO") and the Commission, however, have discredited the Phase II standard as an accurate predictor of facilities-based competition. *See FCC Needs to Improve Its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services*, Report to the Chairman, Committee on Government Reform, U.S. House of Representatives, Government Accountability Office, GAO-07-80 (Nov. 2006) ("*GAO Report*"), at 12; *see also Triennial Review Order*, at ¶ 341 ("[B]ecause the special access revenue triggers require only a single collocated competitor to purchase substantial amounts of special access in a concentrated area, this test provides little, if any, indication that even that competitor has been able to widely, if at all, self-deploy alternative loop facilities in that area."); *see also Triennial Review Remand Order*, at ¶ 192. It would therefore be irrational to rely upon an analogous "trigger" approach in evaluating Section 251(c)(3) forbearance requests.

<sup>93</sup> Verizon has received Phase II pricing flexibility for channel mileage in each of the six MSAs at issue. For channel terminations, Verizon has received Phase II pricing relief in the Pittsburgh and Virginia Beach MSAs, and Phase I relief in the remaining four MSAs. *Verizon Petition for Pricing Flexibility for Special Access and Dedicated Transport*, Memorandum Opinion and Order, 16 FCC Rcd 5884, 5885 (2001); *Petition of Verizon for Pricing Flexibility for Special Access and Dedicated Transport Services*, Memorandum Opinion and Order, 17 FCC Rcd 5359 (2002).

<sup>94</sup> *GAO Report*, at 13.

<sup>95</sup> *See, e.g., ACN et al. Reply to Comments*, at 35-37, 60-63.

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If facilities-based competition were truly as significant in these MSAs as Verizon claims, Verizon would have been forced to reduce its special access rates. It would not have been able to increase them so dramatically without losing significant market share. Nor would it have been able to earn astronomical returns on its special access services. In the *Pricing Flexibility Order*, the Commission acknowledged that after receiving Phase II special access pricing flexibility, there may be some rate increases in areas where costs are higher (and where regulation had pushed prices below costs);<sup>96</sup> however, this is not what is occurring. Rather, the *GAO Report* found that Phase II special access “prices increased on average, regardless of density zone or any other parameters.”<sup>97</sup>

Verizon’s 2005 merger with MCI, Inc. solidified its dominance (along with AT&T) in the special access market and helped create the virtually unfettered ability to raise special access rates that Verizon enjoys today.<sup>98</sup> The Verizon/MCI merger reduced both actual and potential competition among providers of special access services within the Verizon operating territory, leaving customers to rely primarily on the special access services offered by Verizon. Because little to no competition exists within the market for special access services, Verizon, now more than ever, has broad discretion to increase rates for special access services far above costs, and to condition discount service arrangements on terms that harm carrier customers and discriminate against competing providers.<sup>99</sup>

Hence, the Commission’s finding in the *Triennial Review Remand Order* that it would be a “hideous irony” to rely on Verizon’s special access tariff offerings as the basis to relieve Verizon of its unbundling obligations<sup>100</sup> applies equally with respect to Verizon’s request for forbearance from its Section 251(c)(3) unbundling obligations. This is especially true since the level of competition in the six MSAs at issue is so limited that Verizon can easily exploit its market power and, without repercussions, squeeze significantly more revenue out of the

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<sup>96</sup> *Access Charge Reform*, 14 FCC Rcd 14221, at ¶ 155 (1999) (“*Pricing Flexibility Order*”) (subsequent history omitted).

<sup>97</sup> *GAO Report*, at 28. While Verizon asserts it offers substantial discounts under its term and volume plans (*Verizon Reply Comments*, at n.126), the Commission has recognized that Bell Operating Companies can forestall facilities-based competition by “locking up” customers through such offerings. *Pricing Flexibility Order*, at ¶ 79.

<sup>98</sup> *See Verizon Communications, Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, FCC 05-184 (rel. Nov. 17, 2005).

<sup>99</sup> *See, e.g., Comments of XO Communications, LLC, Covad Communications Group, Inc. and NuVox Communications*, WC Docket No. 05-25, RM-10593 (filed Aug. 8, 2007) (“*XO et al. Special Access Comments*”), at 36-37.

<sup>100</sup> *Triennial Review Remand Order*, at ¶ 59.

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marketplace by dramatically increasing its special access prices.<sup>101</sup> If anything, UNEs serve as a counterbalance to ensure Verizon's special access rates do not continue to skyrocket and to promote local competition, which would be damaged considerably if Section 251(c)(3) UNEs were not available.<sup>102</sup>

Empirical evidence of the excessive rates being charged by Verizon for special access today was recently filed with the Commission in the *Special Access Reform* proceeding.<sup>103</sup> This evidence shows that special access rates far exceed the forward-looking economic rates that would exist in a competitive market, which are the rates the Commission had hoped would be available by now.<sup>104</sup> Verizon's recurring and non-recurring month-to-month and three-year term price cap and Phase II pricing flexibility ("Flex II") rates for DS1 transport in the highest density zone in the states of New York, Pennsylvania, and Virginia were compared to UNE DS1 transport rates in each of those states. Similarly, Verizon's recurring and non-recurring month-to-month and three-year term price cap and Flex II rates for DS1 loops/channel terminations in the highest density zone in the states of New York, Pennsylvania, and Virginia were compared to UNE DS1 loop rates in each of these states.<sup>105</sup> The comparisons showed in all cases that special access rates are substantially higher than for comparable cost-based (*i.e.*, TELRIC-based) loop and transport UNEs.<sup>106</sup> McLeodUSA has been confronted with similar dramatic price increases

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<sup>101</sup> In the *Omaha Forbearance Order*, the Commission found that special access-based competition for enterprise services was relevant in its UNE forbearance analysis, notwithstanding the *Triennial Review Remand Order*, because of evidence that "Qwest in certain parts of the Omaha MSA is subject to significant competition from Cox; Cox already has constructed an extensive competitive network and has captured [Confidential \*\*\*] of the residential voice market in the Omaha MSA, and has a demonstrated and growing capacity – and inclination – to compete for enterprise customers." See *Omaha Forbearance Order*, at n.177. These findings imply that the Commission expected competition from Cox to discipline the market power that Qwest otherwise could have exercised over special access customers. In these MSAs, however, Verizon's pricing behavior demonstrates that competition is not disciplining its market power and, therefore, the *Triennial Review Remand Order's* "hideous irony" is fully applicable.

<sup>102</sup> See, e.g., *ACN et al. Reply to Comments*, at 35-38, 60-63.

<sup>103</sup> See, e.g., *XO et al. Special Access Comments*, at 16-20 & Attachment 2.

<sup>104</sup> See *Access Charge Reform*, 12 FCC Rcd 15982, at ¶¶ 266-68 (1997) (subsequent history omitted).

<sup>105</sup> *Id.*, at Attachment 2.

<sup>106</sup> *Id.* In several Verizon states the fixed monthly recurring rates for its month-to-month and 3-year term DS1 transport are lower than the comparable UNE rates; however, the excessive mileage rates charged by Verizon – 371 to 4,462% above cost – allow Verizon to earn supra-competitive returns. See *XO et al. Special Access Comments*, at 20.

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from Qwest as a consequence of the *Omaha Forbearance Order* and will be forced to exit the Omaha MSA absent further Commission action.<sup>107</sup>

At bottom, the CLECs' limited use of Verizon's special access services, Verizon's current excessive special access rates, and Verizon's ability to increase its special access rates without consequence show, in the Commission's own words, that a "competitive market could not develop and survive if access to UNEs were withdrawn completely" from the MSAs at issue.<sup>108</sup> For these reasons, the Commission should find that Verizon's special access data is unavailing and that the Section 251(c)(3) forbearance it seeks should be denied.

#### **IV. IN CONDUCTING ITS FORBEARANCE ANALYSIS, THE COMMISSION MUST CONSIDER THE EXTRAORDINARY SCALE AND SCOPE OF VERIZON'S REQUESTS, AND THE AGGREGATE IMPACT FORBEARANCE WOULD HAVE ON CONSUMERS**

As noted herein, the scale and scope of Verizon's petitions is unprecedented. Verizon seeks Section 251(c)(3) loop and transport unbundling forbearance (as well as forbearance from numerous dominant carrier obligations, price cap and *Computer Inquiry* rules) throughout six MSAs containing some of the largest population centers in the country. In all, over 34 million individuals along with a huge number of businesses across 10 states could be affected if the regulatory relief sought by Verizon is granted. Because the implications of Verizon's requests are so dramatic, the Commission must be especially careful to ensure that the statutory standard for forbearance has been met and a grant of forbearance would serve the public interest. The Commission must not rely on predictive judgment regarding Verizon's post-forbearance behavior or the level of competition that could develop in the markets at issue, but instead must determine whether current market conditions in any wire center in any of the six MSAs are sufficiently competitive and sustainable to justify releasing Verizon's from its statutory obligation to provide access to its facilities in a just and reasonable and non-discriminatory manner.

The two Section 251(c)(3) forbearance petitions the Commission has been required to address so far provide insufficient guidance on how to address forbearance requests of the nature presented by Verizon. Each petitioner in those proceedings sought forbearance in a single MSA with a small number of wire centers serving a modest population center containing a limited number of mass market and enterprise market subscribers. In the larger of the two MSAs – Omaha – there are only 24 wire centers, and the U.S. Census Bureau ranks the Omaha-Council

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<sup>107</sup> See *McLeodUSA Petition*, at 14.

<sup>108</sup> See *Triennial Review Remand Order*, at ¶ 38.

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Bluffs MSA the 60<sup>th</sup> largest MSA in the country.<sup>109</sup> The entire population of the five counties in Nebraska and Iowa that comprise the Omaha MSA is approximately 820,000.<sup>110</sup> Similarly, there are only 11 wire centers in the Anchorage study area, the area in and around Anchorage, Alaska served by petitioner ACS.<sup>111</sup> The population of the entire Anchorage MSA, which the Census Bureau ranks as the 137<sup>th</sup> largest in the country, is approximately 360,000.<sup>112</sup>

In contrast, the six MSAs at issue here – Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach – are some of the largest population centers in the country. They vary in population from 18.8 million (New York) to 1.61 million (Providence), and have a combined population of over 34 million.<sup>113</sup> The New York MSA alone has 23 times the population of the Omaha MSA and, on a combined basis, these six MSAs have nearly 42 times the population of the Omaha MSA. These MSAs, as a group, contain 791 wire centers, over 30 times the number of wire centers at issue in the *Omaha Forbearance Order*.<sup>114</sup> The implications of the current petitions therefore are dramatic.

If the unbundling relief sought by Verizon were granted across all six markets, over 34 million individuals along with a huge number of businesses across 10 states could be affected.<sup>115</sup> These States recognize the serious, wide-ranging implications of Verizon's request on their citizens and have registered their concerns with the Commission. The New Jersey Board of Public Utilities spoke for many of the state commissions when it registered its "extreme[] concern[ ] with the deleterious, profound and lasting consequences that approval of Verizon's

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<sup>109</sup> See *Omaha Forbearance Petition*, n. 3; *OMB Bulletin 07-01 Update of Statistical Area Definitions and Guidance on their Uses*, U.S. Office of Management and Budget (Dec. 18, 2006) ("*OMB Bulletin*"), available at <http://www.whitehouse.gov/omb/bulletins/fy2007/b07-01.pdf>.

<sup>110</sup> *OMB Bulletin*.

<sup>111</sup> *Anchorage Forbearance Order*, at n. 4.

<sup>112</sup> *OMB Bulletin*.

<sup>113</sup> *Id.* These MSAs are the largest (New York-Northern New Jersey-Long Island), 5<sup>th</sup> largest (Philadelphia-Camden-Wilmington), 11<sup>th</sup> largest (Boston-Cambridge-Quincy), 22<sup>nd</sup> largest (Pittsburgh), 34<sup>th</sup> largest (Virginia Beach-Norfolk-Newport News) and 35<sup>th</sup> largest (Providence-New Bedford-Fall River) MSAs in the United States.

<sup>114</sup> The only major markets within the traditional Verizon incumbent local operating territory that are not the subject of a pending forbearance petition are Washington, D.C. (8<sup>th</sup> largest MSA) and Baltimore, Maryland (20<sup>th</sup> largest MSA).

<sup>115</sup> The potentially affected states are: Massachusetts, New Hampshire, Rhode Island, Delaware, New York, New Jersey, Pennsylvania, Maryland, Virginia, and North Carolina.

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Petitions would have on the state's competitive providers and ultimately consumers of telecommunications services" and urged denial of the petitions.<sup>116</sup> Seven of the 10 States affected by the petitions filed comments and/or reply comments with the Commission and none supported granting Verizon the relief it has requested. State regulators are uniquely qualified to determine the effect deregulation is likely to have on consumers and competition and their views regarding Verizon's forbearance request therefore should be afforded significant weight by the Commission.

In establishing the Section 251(c)(3) unbundling rules for loops and transport in the *Triennial Review Order* and the *Triennial Review Remand Order* the Commission certainly could not have contemplated that the Section 10 forbearance provision would be used in the sweeping manner Verizon is attempting here. The Commission acknowledged that there may be discrete geographic markets where a Section 251(c)(3) forbearance petition is warranted because the ILEC "believe[s] the aims of section 251(c)(3) have been 'fully implemented' and the other requirements for forbearance have been met,"<sup>117</sup> but those situations were to be the exception and the loop and transport unbundling rules adopted in the *Triennial Review Order* and the *Triennial Review Remand Order* were intended to apply generally to the ILECs' local exchange operations. Here, Verizon's proposed relief (*i.e.*, the "exception") threatens to swallow the rule and render the Commission's unbundling requirements meaningless in vast portions of the Verizon incumbent local operating territory. The appropriate vehicle for the broad relief sought by Verizon is not a forbearance petition. It is a further Section 251(c)(3) impairment proceeding where the Commission (and interested parties) can devote sufficient time and resources to

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<sup>116</sup> Reply Comments of the New Jersey Board of Public Utilities, WC Docket No. 06-172 (filed Apr. 18, 2007), at 3.

<sup>117</sup> *Triennial Review Remand Order*, at ¶ 39.

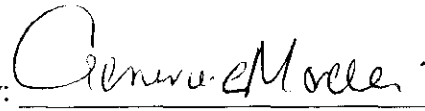
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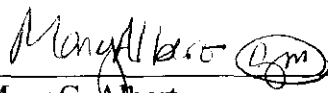
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identifying the exact nature and extent of competition in the local exchange market and the continuing need, if any, for ILEC unbundling obligations.<sup>118</sup>

Sincerely,

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It is especially inappropriate to contemplate the wide-ranging deregulation being sought by Verizon outside of the scope of a rulemaking proceeding when Verizon's vast size and market presence are taken into account. In granting Qwest limited Section 251(c)(3) forbearance in the Omaha MSA, the Commission factored Qwest's costs, size, resources, and financial strength into its analysis. The Commission found that compared to Cox, "Qwest does not have sufficiently lower costs, sheer size, superior resources, financial strength, or technical capabilities to warrant retaining the regulations in question." *Omaha Forbearance Order*, at ¶ 38.



**ATTACHMENT A**

**SUPPLEMENTAL DECLARATION OF  
JOSEPH GILLAN**

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petitions of the Verizon Telephone Companies	)	
for Forbearance Pursuant to 47 U.S.C. §	)	WC Docket No. 06-172
160(c) in the Boston, New York, Philadelphia,	)	
Pittsburgh, Providence, and Virginia Beach	)	
Metropolitan Statistical Areas	)	

**SUPPLEMENTAL DECLARATION OF  
JOSEPH GILLAN**

**I. Introduction**

1. My name is Joseph Gillan. My business address is PO Box 7498, Daytona Beach, Florida, 32116. I previously filed a declaration in this proceeding demonstrating that the E911 database is an unreliable measure of local competition, particularly in the business market.<sup>1</sup> Additional analysis made possible through discovery in a Virginia proceeding<sup>2</sup> – including Verizon’s own concessions provided in its rebuttal testimony – reinforce the conclusions of my initial affidavit that the E911 database significantly overstates the level of competition.

2. Verizon’s response to the analyses in my earlier declaration (as well as a

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<sup>1</sup> Comments of Broadview Networks, Inc., Covad Communications Group, NuVox Communications and XO Communications, LLC - Declaration of Joseph Gillan, WC Docket No. 06-172, (filed Mar. 5, 2007) (“*Gillan Declaration*”), at 4.

<sup>2</sup> *Application of Verizon Virginia Inc. and Verizon South Inc. For a Determination that Retail Services Are Competitive and Deregulating and Detariffing of the Same*, State Corporation Commission of Virginia, Case No. PUC-2007-00008 (“*Virginia Deregulation Proceeding*”).

declaration filed by Dr. Selwyn expressing a similar concern)<sup>3</sup> was entirely theoretical, identifying only hypothetical offsets that *might* cause the E911 database to understate competition:

Both Dr. Selwyn and Mr. Gillan claim that E911 listings data overstate the number of business access lines. But they fail to consider the various ways that E911 listings data *understate* competition for enterprise customers.<sup>4</sup>

Significantly, Verizon did not offer a competing analysis that *demonstrated* that the E911 database was, in fact, accurate. Rather, Dr. Taylor merely claimed that there *could* be offsetting factors to the possible causes of an E911 over-count, without offering any empirical support to prove the point.

3. In the time since my initial declaration was filed, however, further discovery in the *Virginia Deregulation Proceeding* makes clear that Verizon could not have offered a factual defense of the reliability of the E911 database, because its own employees were aware that the E911 database significantly overstates the level of competition, especially in the business market and, moreover, is unreliable at specifying (even this overstated measure of) competition at the wire-center level.

4. This declaration addresses two critical areas. First, I summarize the record in Virginia, including Verizon's own admissions concerning the accuracy of the E911 database as a measure of competition. Because Verizon's forbearance petitions were

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<sup>3</sup> Comments of the Ad Hoc Telecommunications Users Committee - Declaration of Lee L. Selwyn, WC Docket No. 06-172 (filed Mar. 5, 2007) ("*Selwyn Declaration*").

<sup>4</sup> Reply Comments of Verizon – Declaration of William Taylor, WC Docket No. 06-172 (filed Apr. 18, 2007) ("*Taylor Declaration*"), at 2 (emphasis in original).

developed using the same methodology as its Virginia Application,<sup>5</sup> the deficiencies in its E911 analysis exposed through the Virginia proceeding apply to the E911 analyses provided by Verizon in this proceeding as well.

5. Second, I analyze whether the claimed distribution of entry based on the E911 database is accurate. Specifically, I sought to determine whether a competing carrier is *actually* serving customers in each of the wire centers where Verizon asserts the carrier competes based on its summary of E911 listings. As I explain in Section III below, Verizon's analysis of the E911 database commonly reports listings for carriers in wire centers where the carriers themselves do not serve customers. Consequently, not only does Verizon's E911 methodology systematically *overstate* the level of competition (as demonstrated by the Virginia discovery and as discussed in Section II), but it also cannot be relied upon to measure the *distribution* of competitive activity at the wire-center level (as shown in Section III).

## **II. Summary of E911 Findings in Virginia**

6. My initial declaration in this proceeding summarized the result of various state proceedings where it was possible to compare estimates of competitive local exchange

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<sup>5</sup> See Letter from Joseph Jack, Verizon Communications, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 06-172 (Jun. 13, 2007), at Attachment A. There is one apparent difference between Verizon's Virginia and federal methodologies: In its federal filing, Verizon provides both a "low" and a "high" range of claimed lines at wire centers, whereas in Virginia, Verizon did not perform the allocation that results in its "high" estimate. Although the Virginia data did not include this "high estimate" allocation, a threshold question is whether the distribution of competitive activity asserted in Verizon's "low scenario" is accurate, even *before* Verizon performed the allocation that creates its high-scenario estimates.

carrier ("CLEC") lines developed from the E911 database to the actual line counts of the carriers. As explained in that declaration:

[I]n each and every instance where the E911 database has been made available for validation, the database has been shown to inflate the level of competition. The E911 database should not be relied upon to any extent to determine the level of competition in any market.<sup>6</sup>

7. To be clear, I am not suggesting that the E911 database itself is inaccurate. Rather, Verizon is seeking to use the E911 data for purposes for which it was never intended and for which the database does not contain sufficient information. As a result, Verizon is presenting the results it extracted from the database in a misleading and unreliable manner.

8. In the time since my initial declaration was filed, the Virginia State Corporation Commission has conducted a proceeding in response to a Verizon request for reduced regulation that, like Verizon's forbearance petitions, is largely supported by estimates of competition that Verizon developed from the E911 database. Discovery in the *Virginia Deregulation Proceeding* permitted a comparison of carrier line counts derived from the E911 database to the actual line counts for several carriers; specifically, the actual line counts for Verizon's incumbent local exchange carrier ("ILEC") operations in Virginia, its affiliate MCI, and Cox Communications.<sup>7</sup>

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<sup>6</sup> Gillan Declaration, at ¶ 17.

<sup>7</sup> Verizon was required (pursuant to a discovery request by Cox Communications) to disclose the line counts of its local exchange operations and those of its affiliate MCI (d/b/a Verizon Business). In addition, because the Virginia analysis was sponsored by Cox Communications, confidential data for that carrier was made available. As shown below, the results consistently demonstrated that the E911 database overstates the level of competition for

9. Although the precise details of the Virginia analysis are subject to a confidentiality agreement, the Virginia Commission removed the confidential designation on the following key conclusions:

- \* [N]early 90% of the “lines” derived from the E911 database for MCI do not actually exist.
- \* The error rate for Cox is somewhat less; nonetheless, nearly 65% of the E911 business lines claimed by Verizon for Cox do not exist.
- \* Although Verizon did not use the E911 database to estimate its own business lines, had it done so, it would have calculated nearly 40% more business lines than it actually serves.<sup>8</sup>

10. The statistics presented above are calculated as the percentage of listings in the E911 database that do not correspond to actual switched-access lines.<sup>9</sup> This same data can also be expressed as the percentage *increase* in claimed competition created through Verizon’s reliance on the E911 database.<sup>10</sup> When viewed in this way, the relevant percentages range from a “low” of 67% (Verizon), to a high of 900% (MCI). Said

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each of these carriers in the business market. Consequently, while the analysis was limited to these three carriers (due to confidentiality concerns), there is no reason to expect the results are unique to these companies (as opposed to a systematic concern across all providers).

<sup>8</sup> Pre-Filed Direct Testimony of Joseph Gillan on behalf of Cox Virginia Telecom, Inc., State Corporation Commission of Virginia, Case No. PUC No. 2007-00008 (filed Jun. 1, 2007), at 19. A redacted copy of those sections of my Virginia testimony relevant to the E911 database is included as Attachment JPG-1.

<sup>9</sup> Specifically, the percentage is calculated as:

$$\% = 1 - \frac{\text{Actual \# of Switched Lines}}{\text{\# of E911 Listings}}$$

<sup>10</sup> An alternative method of calculating the overstatement of competitive activity caused by a reliance on the E911 database is as follows:

$$\% = \frac{(\text{\# of E911 Listings} - \text{Actual \# of Switched Lines})}{\text{Actual \# of Switched Lines}}$$

differently, the E911 database can be expected to inflate measures of access lines by between 67% to 900% -- hardly a reliable measure of competition.

11. In addition to my analysis summarized above, the Staff of the Virginia Commission performed an even more comprehensive comparison of Verizon's claims to actual line counts reported by a number of CLECs to the State Commission.<sup>11</sup> The Staff's E911 analysis evaluated the reliability of Verizon's E911 methodology in both the residential and business markets and determined that it overstated competition in each market. Specifically, the Staff found that, when compared to line counts reported by carriers to the Staff on a semi-annual basis, the Verizon E911 methodology:

Discrepancies in the Residential Line Count

- \* Overstated AT&T's lines by 32 percent.
- \* Overstated Cavalier's lines by 27 percent.
- \* Overstated NTELOS' lines by 1,774 percent.<sup>12</sup>

Discrepancies in the Business Line Count

- \* Overstated AT&T's lines by 127 percent.
- \* Overstated NTELOS' lines by 50 percent.
- \* Overstated Telcove's lines by 17 percent.
- \* Overstated XO's lines by 55 percent.<sup>13</sup>

12. Confronted with the unambiguous deficiencies in the E911 database in Virginia, Verizon shifted its defense of the E911 database as a measure of local competition in its

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<sup>11</sup> Pre-Filed Testimony of Kathleen A. Cummings, Deputy Director Rates and Costs, Division of Communications, State Corporation Commission of Virginia, Case No. PUC-2007-00008 (filed Jun. 27, 2007) ("*Cummings Direct*").

<sup>12</sup> *Cummings Direct*, at 6.

<sup>13</sup> *Cummings Direct*, at 7-8.

rebuttal testimony. Although couched in careful words, Verizon effectively admitted that the E911 database would routinely be expected to inflate the number of competitors' business lines by 100% (or more), and that it does not reliably measure competition at the wire-center level:

Accordingly, at the state level, ratios of business E-911 listings to access lines in the 2:1 neighborhood are not unexpected.<sup>14</sup>

\*\*\*

Additionally, these same [intervening] parties question the reliability of E-911 data presented at the wire center level, despite the fact that Verizon did not use wire center level E-911 data in support of its competitive analysis. Instead, Verizon presented the E-911 data at the statewide level, and in the alternative, at an MSA/non-MSA level, avoiding the complications of allocating data to wire centers.<sup>15</sup>

\*\*\*

Verizon did not present a wire center level allocation in its Application, in part because, as noted in OAG 158, "the allocations may not be reliable at the wire center level."<sup>16</sup>

13. Although Verizon's Virginia testimony continues to maintain that "the number of E911 listings provides useful insights into the competitive presence of facilities-based

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<sup>14</sup> Rebuttal Testimony of Harold E. West III, State Corporation Commission of Virginia, Case No. PUC-2007-00008 (filed Jul. 16, 2007) ("*West Rebuttal*"), at 7.

<sup>15</sup> *West Rebuttal*, at 5 (emphasis added). Although Verizon claims that it did not "use" E911 data at the wire center level in its Virginia analysis, it certainly *presented* such data in its testimony, as noted by the Virginia Staff. See *Cummings Direct*, at 9 ("Verizon's Exhibit 15 (there is a separate Exhibit 15 for each of the 16 MSAs or Regions) provides CLEC market share results for every Verizon Wire Center in Virginia. Therefore, the accuracy and reliability of the more granular data used in Verizon's analysis is critical in evaluating its use for (or in) our analysis.") At no time prior to the filing of rebuttal testimony did Verizon explain it was merely presenting such wire center data, but not using the data in support of its Application.

<sup>16</sup> *West Rebuttal*, at 13. OAG 158 refers to a Verizon response to a discovery request from the Office of Attorney General that described the methodology Verizon used to develop local competition estimates from the E911 database.



CLECs, including where they serve and a sense for their relative magnitude,”<sup>17</sup> it is critical to note that the “where they serve” does not include providing a reliable measure of competition at the wire center level, and the “sense for their relative magnitude” is an error rate of 100% or more.<sup>18</sup> To the extent that the Commission requires a competitive analysis that is reliable and accurate at the wire center level – which is what is required under the *Omaha Forbearance Order* standard<sup>19</sup>– the E911 database analysis presented by Verizon fails in that regard.

### **III. Verizon’s E911 Claims are Geographically Unreliable**

14. The section above demonstrates, based on the analyses performed in the *Virginia Deregulation Proceeding*, that the E911 data relied upon by Verizon significantly overstates the level of competition. The data provided by Verizon in this proceeding reinforces that conclusion.<sup>20</sup> Furthermore, the competitive carrier line count data provided by Verizon for the six MSAs at issue here demonstrates not only that Verizon’s

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<sup>17</sup> *West Rebuttal*, at 5.

<sup>18</sup> Notably, Dr. Taylor did not inform this Commission in his Reply Affidavit that “ratios of business E-911 listings to access lines in the 2:1 neighborhood are not unexpected” when criticizing concerns that the E911 database overstates the level of competition. Although Dr. Taylor’s Reply Affidavit was filed two months before Verizon’s rebuttal testimony in the Virginia case (a proceeding in which Dr. Taylor also participated), it is unlikely that Verizon only discovered the admitted deficiencies in the E911 database in the intervening months.

<sup>19</sup> *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Omaha Metropolitan Statistical Area*, Memorandum Opinion and Order, 20 FCC Red 19415 (2005) (“*Omaha Forbearance Order*”), *aff’d Qwest Corporation v. Federal Communications Commission*, Case No. 05-1450, (D.C. Cir. Mar. 23, 2007).

<sup>20</sup> See Reply Comments of Verizon - Reply Declaration of Quintin Lew, John Wimsatt and Patrick Garzillo, WC Docket No. 06-172 (filed Apr. 18, 2007), at Attachment D, Exhibits 3.A (New York) through 3.F (Virginia Beach).

use of the E911 listing data overstates competition *generally*, it also distorts the geographic distribution of competition by causing it to appear *broader* than it actually is.

15. As to the first point, the largest non-cable based provider of residential services identified by Verizon in the data filed by Verizon is Cavalier Communications. Cavalier Communications was able to determine how many residential and business switched lines it served in December 2006 in the combined geographic areas where Verizon is seeking forbearance. I compared this information to the data filed with Verizon's Reply Comments and calculated that Verizon's E911 methodology significantly overstates the number of switched lines actually served by Cavalier by 44% in the residential market and 95% in the business market.<sup>21</sup>

16. In addition to the analysis above, the sponsors of this Declaration were asked to determine whether they, in fact, even served lines in each of the wire centers claimed by Verizon. The results of this analysis are presented in Exhibit JPG-2 (attached). As shown more fully in Exhibit JPG-2, the number of "phantom wire centers" – that is, wire centers where Verizon claims the carrier is competing, but in which the carrier's records show no such activity – ranges between 37% (Cavalier) and 59% (One Communications) of the total number of wire centers. The range is even greater in individual MSAs, from 10% to 75% for One Communications (in the Pittsburgh and New York MSAs, respectively). Moreover, the analyses exposed two "outliers" that serve to further underscore just how unreliable the data is.

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<sup>21</sup> Percentage Error calculated as follows:

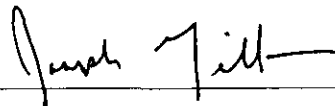
$$\% = \frac{(\# \text{ of E911 Listings} - \text{Actual \# of Switched Lines})}{\text{Actual \# of Switched Lines}}$$

17. First, Verizon claims that Cavalier provided service in nearly two-dozen wire centers in the Boston MSA when, in fact, Cavalier does not compete in Boston *at all*. Second, Verizon's methodology omitted a number of wire centers served by Broadview Networks in the New York MSA, demonstrating that a methodology as unreliable as Verizon's will, in rare circumstances, produce anomalous results of the opposite form.<sup>22</sup> Attachment JPG-2 demonstrates that Verizon's admission in Virginia – *i.e.*, that its methodology is unreliable at the wire center level<sup>23</sup> – is unquestionably true.

#### IV. Conclusion

18. Verizon's reliance on E911 listings as a measure of local competitive activity is misplaced. Discovery and cross-examination in Virginia – as well as an analysis of data filed in this proceeding – demonstrates that E911 listings overstate competition and cannot be relied upon at the wire center level.

Executed on August 27, 2007.

  
\_\_\_\_\_  
Joseph Gillan

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<sup>22</sup> Notably, the Broadview New York MSA example should not be interpreted as evidence that the Verizon methodology is “sometimes high, sometimes low, but on average acceptable.” With a sample of 17 city-carrier pairs, it should not come as a surprise that a highly unreliable system -- which the Verizon methodology has clearly been shown to be -- will, in rare cases, produce an anomaly with flaws contrary to the prevailing error.

<sup>23</sup> *See* n. 16, *supra*.

## **ATTACHMENT JPG-1**

**BEFORE THE  
STATE CORPORATION COMMISSION  
OF VIRGINIA**

Application of Verizon Virginia Inc.                     )  
and Verizon South Inc. For a                             )     Case No. PUC-2007-00008  
Determination that Retail Services Are                )  
Competitive and Deregulating and                     )  
Detariffing of the Same.                                 )

**REDACTED FOR PUBLIC INSPECTION**

**Pre-Filed Direct Testimony  
Of  
Joseph Gillan  
On Behalf of  
Cox Virginia Telecom, Inc.  
(Revised)**

**June 1, 2007**

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Comparing Geographic Dispersion of UNE-L and UNE-P .....	JPG-7

1 A. There are two conclusions supported by the wireless porting data (also presented  
2 in Exhibit JPG-4.) First, the data indicates that *very* few customers (less than 1%)  
3 have ported their wireline phone number to a wireless provider. This data  
4 suggests that relatively few customers view such services as interchangeable.  
5  
6 Second, of the customers that have ported their wireline number to a wireless  
7 carrier, significantly more than half ported their number to Verizon Wireless.  
8 Consequently, even for the (relatively) small portion of the population that has  
9 ported a wireline number to a wireless carrier, the most common beneficiary of  
10 that action is Verizon itself.

11  
12 **III. The E911 Database is Unreliable as a**  
13 **Measure of Local Competition**  
14

15  
16 **Q. As explained above, the core basis for Verizon's Application is the E911**  
17 **database. Does this database support the claims that Verizon makes?**

18  
19 A. No. The E911 database does not support the competitive claims made by  
20 Verizon. As I explain in more detail below, the E911 database:

21  
22 \* Systematically overstates the level of switch-based  
23 competition, particularly in the business market; and

1

2

\* As manipulated by Verizon, distorts the distribution of  
competitive activity through an allocation algorithm that  
makes competition look more widespread.

3

4

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**Q. Is there evidence that the E911 database significantly overstates competition?**

7

8

A. Yes. Highly Confidential Exhibit JPG-5 compares the number of switched  
business lines that MCI, Cox and Verizon actually serve to the number of lines  
portrayed in the E911 database. As shown by the exhibit, nearly 90% of the  
“lines” derived from the E911 database for MCI do not actually exist. The error  
rate for Cox is somewhat less, but is still that nearly 65% of the E911 business  
lines claimed by Verizon for Cox do not exist. Although Verizon did not use the  
E911 database to estimate its own business lines, had it done so, it would have  
calculated nearly 40% more business lines than it actually serves.

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The evidence clearly shows that the E911 database systematically inflates  
business line counts by counting as a distinct line each “phone number” from  
which a potential E911 call can be placed. The analysis presented by Verizon  
exploits this flaw by comparing Verizon’s line-count to a measure of CLEC  
phone numbers. This mismatch causes Verizon’s relative line share to appear  
smaller than it actually is because it improperly combines two *different* ways to

1 measure activity. The analysis is fundamentally flawed and is designed to  
2 significantly and dramatically inflate CLEC activity.  
3

4 **Q. Is this problem with the E911 database unique to Verizon's application in**  
5 **Virginia?**  
6

7 A. No. Over the past several years, incumbent LECs have used selected data from  
8 the E911 database in several state proceedings to portray local competitive  
9 conditions. Although Verizon claims that this fact – i.e., that other ILECs have  
10 previously abused the E911 database in the manner done here – should be seen as  
11 “validation” of the E911 database, such a characterization is far from the truth.<sup>22</sup>  
12 To the contrary E911-based claims of competitive activity have only recently  
13 been opened to review and challenge (through state-level discovery procedures  
14 generally unavailable at the federal level), and that the problems with the using  
15 the database in this manner are just now becoming well understood.  
16

17 Attached to this testimony is a Declaration (Exhibit JPG-6) filed with the FCC,  
18 where the E911 database is similarly being used by Verizon to claim widespread,  
19 facilities-based competition. The conclusion of that Declaration (as with my

---

<sup>22</sup> See, for instance, Verizon Response to Staff RFI No. 35, where Verizon states “... the FCC and several State Commissions have relied upon E-911 data as a valid indicator of the presence of facilities-based alternatives.”



1 testimony here) is that the E911 database significantly overstates the level of  
2 facilities-based competition:

3  
4 The confidential nature of the E911 database makes it difficult to  
5 validate whether it accurately measures local competition. Over  
6 the past several years, however, E911-based data has been  
7 proffered by Incumbent Local Exchange Carriers (ILECs) in a  
8 variety of state proceedings where discovery procedures permitted  
9 the comparison of these E911-based claims to actual line counts  
10 provided by the CLECs themselves.... [The] results of these  
11 validation efforts that demonstrated, without exception, that the  
12 E911 database systematically overstates the number of lines served  
13 by competitors and, as such, it is not a reliable measure of local  
14 competition.<sup>23</sup>

15 \*\*\*

16 As shown [in the Declaration] ..., in each and every instance  
17 where the E911 database has been made available for validation,  
18 the database has been shown to inflate the level of competition.  
19 The E911 database should not be relied upon to any extent to  
20 determine the level of competition in any market.<sup>24</sup>

21  
22 A complete copy of the Declaration (including the exhibits to that Declaration that  
23 contain the relevant sections of cited testimony in other states), is provided as  
24 Exhibit JPG-6 (attached).<sup>25</sup>  
25

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<sup>23</sup> Declaration of Joseph Gillan, Federal Communications Commission WC Docket No. 06-172, March 2, 2007, at ¶ 9. Footnotes omitted.

<sup>24</sup> *Ibid* at ¶ 17.

<sup>25</sup> Because it would be duplicative to Exhibit JPG-1 (attached), I have not included in the Exhibit JPG-7 the attachment filed at the FCC (Exhibit 1) that contained a statement of my qualifications.